Food, Drug, Beverage Warehousemen and Clerical Employees Local 595, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Edna H. Pagel, Inc., d/b/a Sweetner Products Company; and Vernon Warehouse, Inc. Case 21-CB-7330

24 February 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 5 August 1981 Administrative Law Judge Burton Litvack issued the attached decision. The Respondent filed exceptions and the General Counsel filed cross-exceptions, a supporting brief, and a brief in answer to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.

We agree with the judge that Respondent Union is obligated to sign the collective-bargaining agreement it negotiated with the Employers. The agreement contained a clause, to which the Union did not object, that the agreement would be submitted to the unit employees whose ratification or rejection would be binding on the Union. Upon ratification, and, indeed, expressly because of it, the Respondent disclaimed any further interest in representing the unit employees and unilaterally "transferred" its representation status to a sister local. The Respondent, however, did not thereby acquire the privilege of rescinding the agreement, for, having negotiated and reached an agreement on behalf of the employees, the Respondent's statutory duty to bargain required it to execute, on request, the "written contract incorporating the agreement reached."[1] This requirement accords with the longstanding recognition by the Board and the courts that a signed agreement is an effective force in stabilizing labor relations and preventing strikes and industrial strife. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514, 524 (1941). As the Respondent's obligation to sign became fixed before it disclaimed interest in representing the employees covered by the agreement, its refusal to sign constitutes a violation of its duty under Section 8(b)(3) of the Act, irrespective of the motivation or effectiveness of its purported disclaimer.[2]

However, we hereby modify the judge's Conclusion of Law 4 to the extent that it finds the Respondent in violation by failing and refusing to "abide by" the contract, and we shall modify his recommended Order accordingly. Failure to abide by the contract was not alleged as a violation, it was not presented as an issue, and neither the General Counsel nor the Employers-Charging Parties requested that the Respondent affirmatively be required to abide by it.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Food, Drug, Beverage Warehousemen and Clerical Employees Local 595, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Vernon, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Delete from paragraph 1(a) the words "and abide by."

2. Delete from paragraph 2(a) the words "and abide by."

3. Substitute the following for paragraph 1(b).

"(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

4. Substitute the attached notice for that of the administrative law judge.

[1] Sec. 8(d) of the Act.

[2] Although the Respondent, upon being presented with the ratified agreement for signature, expressed its intention to cede its representative status, it continued to collect dues for several months, during which time it communicated nothing further to the Employers signifying an actual change in status. Thus, its disclaimer was, at least as of the time of its refusal to sign, somewhat indefinite. Cf. *Meat Cutters Local 158 (Eastpoint Seafood)*, 208 NLRB 58 (1974); *Electrical Workers IBEW (Textile, Inc.)*, 119 NLRB 1792, 1798-99 (1958).

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Edna H. Pagel, Inc., d/b/a Sweetener Products Company and Vernon Warehouse, Inc., herein called the Employers, as the certified representa-

tive for purposes of collective bargaining of all the Employers' warehouse employees, forklift operators, mill operators, and liquid plant employees; excluding all other employees, drivers, maintenance employees, guards and supervisors as defined in the Act, by refusing to execute the collective-bargaining agreement embodying the terms and conditions of employment contained in the Employers' contract proposal which was ratified by the aforementioned employees on 26 April 1980.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL forthwith execute the collective-bargaining agreement embodying the terms and conditions of employment contained in the Employers' contract proposal which was ratified by the aforementioned bargaining unit employees on 26 April 1980.

FOOD, DRUG, BEVERAGE WAREHOUSEMEN AND CLERICAL EMPLOYEES LOCAL 595, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge: This matter was heard before me in Los Angeles, California, on March 5, 1981. On March 31, 1980,[1] the Regional Director of Region 21 of the National Labor Relations Board, herein called the Board, issued a complaint,[2] based on an unfair labor practice charge filed on May 27 by Edna H. Pagel, Inc., d/b/a Sweetner Products Company and Vernon Warehouse, Inc., herein called the Employers, alleging that Food, Drug, Beverage Warehousemen and Clerical Employees Local 595, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Respondent, engaged in acts and conduct violative of Section 8(b)(3) of the National Labor Relations Act, herein called the Act. The Respondent filed an answer, denying the commission of any unfair labor practices. All parties were afforded full opportunity to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. Both counsel for the General Counsel and counsel for the Employers filed posthearing briefs, and these have been carefully considered. Counsel for the Respondent did not file a brief. Based on the entire record, the posthearing briefs, and my observation of the demeanor of the witnesses, I make the following

[1] Unless otherwise stated, all dates herein occurred in 1980.

[2] The instant matter was originally consolidated for hearing with another matter, Case 21-CB-7331, which involved another labor organization. That matter was settled after the hearing opened and was severed from the proceedings.

FINDINGS OF FACT

I. JURISDICTION

The parties stipulated that Edna H. Pagel, Inc., d/b/a Sweetner Products Company, is a California corporation engaged in the business of warehousing and distributing sugar and sugar products and related products and that, during the 12-month period immediately preceding the issuance of the complaint, it purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the State of California. The parties further stipulated that Vernon Warehouse, Inc. is a California corporation engaged in the business of warehousing and storing sugar and sugar products and that, during the 12-month period immediately preceding the issuance of the complaint, it sold services valued in excess of $50,000 directly to customers located outside the State of California. The parties also stipulated that the Employers are affiliated business enterprises with common ownership, officers, management, and supervisors and a commonly formulated and administered labor relations policy affecting their employees and that they constitute a single integrated business enterprise and are a single employer within the meaning of Section 2(2) of the Act. Based upon the foregoing, and the record as a whole, I find that the Employers are employers engaged in commerce within the meaning of Secion 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Respondent admits in its answer, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUE

Has the Respondent engaged in acts and conduct violative of Section 8(b)(3) of the Act by failing and refusing, since on or about May 2, to execute a written collective-bargaining agreement, incorporating the terms of an agreed-upon contract with the Employers?

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts*

Edna H. Pagel, Inc., d/b/a Sweetner Products Company is engaged in the business of warehousing and distributing sugar and sugar products and related products, and Vernon Warehouse, Inc. is engaged in the business of warehousing and storing sugar and sugar products. The Employers share a common warehouse facility in Vernon, California. Robert Shipp is the chairman of the Employers' board of directors, and Jack McCarthy is the president of both corporations. For many years, Wholesale Delivery Drivers and Salesmen's Union, Local 848, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Local 848, has represented the Employers' drivers, and the Respondent has represented the Employers' warehouse employees, forklift operators, mill operators, and liquid plant employees. Pursuant to a decertification peti-

tion, which was filed against the Respondent on June 6, 1979, a representation election was conducted on November 28, 1979, among the Employers' warehouse employees, forklift operators, mill operators, and liquid plant employees; excluding all other employees, drivers, maintenance employees' guards and supervisors as defined by the Act. A majority of said bargaining unit employees cast ballots in favor of the Respondent, and on December 6, 1979, the Acting Regional Director for Region 21 certified the Respondent as the collective-bargaining representative for the aforementioned employees.

Subsequently, continuing through April 16, 1980, representatives of the Respondent, Local 848, and the Employers engaged in extensive collective bargaining for contracts covering the employees in both bargaining units. Apparently, in view of similar language and economic provisions, the negotiations were conducted on a joint basis. Regarding what transpired at the various bargaining sessions, the record contains only the uncontroverted and, accordingly, credited testimony of the Employer's attorney, Richard Irvin.[3] He testified that the parties' negotiations covered nine bargaining sessions and that he and Walt Petitt, who is a division representative for Respondent and who is responsible for negotiating and policing collective-bargaining agreements and for processing grievances,[4] were the main spokesmen for the Employers and the Respondent, respectively. The initial meeting was held shortly after the Board's certification of the Respondent at the Employers' Vernon facility, and Petitt immediately demanded that the Employers execute an "industry-wide" contract with certain changes which were contained in an addendum. Countering that the Employers would only accept an agreement "geared specifically" to their needs, Irvin presented Petitt with proposed language and economics in the form of a "model" contract. At the next meeting on January 2, 1980, the Respondent's attorney was present and stated that the Respondent could negotiate nothing unless a 30-day union-security clause was included in the contract. Irvin, who had proposed a "maintenance of membership" provision, said that he was not foreclosing the possibility but that the Employers wished to negotiate an entire contract and that they would consider all issues, with union security open to negotiation like all other provisions. The parties met again the next day, and the Respondent's attorney immediately asserted that the Employers were attempting "to union bust" and demanded a "final offer" from the Employers, which offer would be presented to the employees at a ratification meeting 2 days later. Irvin asked whether the Respondent was certain as to this course. After the attorney indicated yes, Irvin drafted a document confirming the request, and the attorney signed it.[5] Subsequent to this meeting, Irvin and McCarthy prepared a "final offer" for the Respondent; such was presented to the bargaining unit employees on January 5 and was rejected.

The parties next held a bargaining session on either January 20 or 22 at the offices of the Federal Mediation and Conciliation Service (FMCS) in Los Angeles. Irvin and Petitt reached no agreements but rather spent the meeting reviewing the aforementioned "final offer" proposal by proposal, with each party stating its position. The parties next met on February 7 at the FMCS office. Irvin presented a supplement to the Employers' January offer to the Respondent and, after Irvin explained the modifications contained therein, the parties engaged in lengthy bargaining over the following topics: house rules, length of probationary period, union security (the Employers accepted a 30-day union-security clause), company security, a no-strike, no-lockout provision, the grievance procedure, hours of work, and all economic provisions, including wages (about which Irvin stated that the Employers' January 5 offer was final). The next bargaining session was held on February 27 at the FMCS office, but no substantive negotiations occurred. Rather, Irvin explained to employee representatives what had transpired to date. Subsequent to this meeting, after notifying the Respondent as to their intent, the Employers implemented their January 5 wage proposal, which proposal was deemed inadequate by the Respondent.

The next two bargaining sessions were held at the FMCS office on March 25 or 26 and April 3. At both, the Employers modified their positions on several contract provisions, and extensive, productive bargaining ensued. Thus, at the former meeting, the Employers agreed to delete the house rules from the contract, and the Respondent, while continuing to demand a maintenance of benefits clause, agreed to the Employers' health and welfare proposals. Further, at the April 3 session, the parties reached agreement on provisions concerning subcontracting of unit work, a grievance procedure, holidays, funeral leave, and hours of work and conditions of employment. According to Irvin, "Mr. Petitt indicated Local 595 would accept and could live with the language as proposed."

The next, and final, negotiating session between the Respondent and the Employers occurred on April 16 at the FMCS office. At the outset, the parties reviewed the Respondent's proposed contract and all of the Employers' proposals "to confirm where we were in agreement on the language and make sure where we didn't agree." The record discloses that the following were the provisions about which there remained dispute: company se-

[3] It must be noted Irvin was not a particularly impressive witness, contradicting himself on several occasions with regard to which provisions the parties reached agreement. However, the Respondent did not seek to controvert his testimony and, as will clearly be seen infra, the central issues herein do not concern the particular topics of bargaining. Accordingly, I rely on Irvin's account of the bargaining, noting that counsel for the Respondent stipulated that Jack McCarthy would have corroborated Irvin's testimony.

[4] The complaint alleges that Petitt is an agent for the Respondent; however, in its answer, Respondent denies his alleged status. The Board traditionally had concluded that union officials such as Petitt are agents of their employer labor organizations. *Painters Local 1555 (Alaska Constructors)*, 241 NLRB 741, 747 (1979); *Hampton Merchants Assn.*, 151 NLRB 1307 (1965); *Perry Norvell Co.*, 80 NLRB 225 (1948); *Longshoremen (Sunset Line)*, 79 NLRB 1487 (1948). Accordingly, I find Petitt to have acted as the Respondent's agent at all times material herein.

[5] The document reads: "I request . . . that [the Employers] give [Respondent] its final offer for a new contract to supercede the most recently expired [contract] so that it can be reviewed and presented to the unit employees at a meeting scheduled for . . . January 5, 1980." The representative for Local 848 demanded the same sort of final offer and executed an identical confirming document.

curity, wages, sick leave, a maintenance of benefits clause, strikes and lockouts, length of the probationary period, the separability clause, vacation language, seniority relating to probationary employees, and the effective date of the contract. Substantively, the only issue discussed was the maintenance of benefits clause. Finally, Petitt announced "that if the Employer could see its way clear to grant the maintenance of benefits language, he would then present the proposal in its present form to the employees for a ratification vote. However, he would not be recommending or supporting the proposal." Irvin agreed to this, and the parties also agreed that both the Respondent's and the Employers' sick leave proposals (either 6 total days or 5 days and 20 cumulative days) would be given to the employees and that they could choose either proposal for inclusion in the final agreement. At that point, the meeting ended.

A few days later, Irvin delivered to Jack McCarthy, for transmittal to the Respondent, the Employers' contract proposal, which contained what the parties had agreed on April 16 would be submitted to the warehouse employees for ratification. Two aspects of the proposed contract are of significance herein. First, by virtue of language set forth in article XXIII, ratification by the employees appears to have been agreed upon by the parties as the method by which the Respondent would either accept or reject the entire proposal ("Upon ratification by employees within the covered bargaining unit this Agreement shall be effective . . . ."). Second, the proposed contract bifurcates the bargaining unit employees into junior or senior status[6] for purposes of wages and vacations. As to this, the record discloses that the employee bifurcation language existed as a proposal by the Employers since January 5 and that there is no evidence at any time of any specific objection by Respondent to said language.

A ratification meeting was held on or about Saturday, April 26, at the Teamsters union hall in Los Angeles. Inasmuch as bargaining had been conducted on a joint basis and as similar proposals had been offered to both unions, employees in the two bargaining units were invited to—and attended—the meeting, and representatives of Local 848 and Walt Petitt, on behalf on the Respondent, conducted the proceedings. Employee Paul Markham and Petitt testified with regard to what transpired, about which there is no dispute. Petitt began by reviewing the entire proposal item by item and explaining what each provision entailed. Upon concluding Petitt announced to the Respondent's members that, if they ratified the Employers' proposed contract, such would cause Respondent to transfer representation of them to Local 848. According to Petitt, he did so "because that was what we felt we were going to do. It is the policy of our local, primarily because we are representing thousands of other members in other contracts where multi-employers are involved, that we don't want to have a policy of representing a two-tiered [i.e., junior/senior employee distinction] contract." At that point, the employees were requested to vote on the ratification or rejection of the contract proposal. Notwithstanding Petitt's threat that the Respondent would cease to represent them, the employees, in the warehouse unit represented by the Respondent, voted 12 to 4 in favor of ratifying the Employers' proposal.

On the following Monday, Petitt telephoned Jack McCarthy and, according to the latter, "He told me that the employees had had the vote and much to his chagrin they had accepted . . . and ratified the contract." Thereupon, McCarthy notified attorney Irvin of the results and requested that the latter draft a complete collective-bargaining agreement, embodying the proposal which the employees had ratified. Irvin did so, and the next day, he sent the newly drafted contract, General Counsel's Exhibit 15, to McCarthy. McCarthy signed two copies of the document and enclosing both sent a letter, dated May 1, 1980, to Petitt, requesting that the latter execute one copy, return it to McCarthy, and retain the other copy for his files.

Meanwhile, admittedly based on the membership's acceptance of a contract which contained provisions, the two-tiered junior senior employee distinction, contrary to the Respondent's standard practice, Petitt drafted and ordered mailed to the Employers the following letter, dated April 29:

> In view of the small number of employees in the bargaining unit, Local 595 will cede to Local 848 its representation rights of employees of [the Employers] and Local 848 will execute the contract covering the entire unit described in the contract.[7]

The two aforementioned letters crossed in the mail, with McCarthy receiving the Respondent's letter on or about May 4 or 5. By letter, dated May 6, McCarthy immediately answered the Respondent, acknowleding receipt of the April 29 letter and stating that the Employers had bargained in good faith with the Respondent as the collective-bargaining representative of their warehouse employees, that said employees had ratified a contract between the parties and that the Employers expected the Respondent "to execute the contract as agreed . . . ." To date, the Respondent has continued to refuse to do so.

Carrying out his April 26 threat to the warehouse employees but asserting that the Respondent's intent was to ensure their continued representation, in mid-June Petitt notified Local 848 that the Respondent would cede representation of said warehouse employees to that Local, submitting to it the names and addresses of those in that bargaining unit. According to Petitt, Local 848 accepted the "transfer list." There is no record evidence that the warehouse employees were aware of this "transfer" of representation; however, shortly thereafter, the Respondent, by mail, notified said employees that a meeting would be held at the Respondent's office on or about

[6] Senior employees were those hired prior to the effective term of the contract; while a junior employee is defined as one hired on or after the aforementioned date. Employees in the latter category, notwithstanding their job classification and length of service (seniority), would be entitled to shorter paid vacations than comparable senior employees and would earn less wages.

[7] Although signed by J. L. Vercruse, the secretary-treasurer of Respondent, the letter was drafted by Petitt.

June 7. The record is unclear as to what occurred at this employee meeting. Thus, Paul Markham testified that between 5 and 10 employees were present and that those present were told by Petitt that the Respondent could no longer represent them because the Union "didn't want to have . . . a split contract . . . so they gave us a choice of 848 or some other local and we went to 848." According to Markham, this selection was not accomplished by a vote as "they wouldn't let us. It wouldn't do no good, they said." Markham could not recall whether Petitt announced that another meeting would be scheduled for a future date. Petitt, who admitted, "I really don't have a good memory as to what was said," testified nevertheless that only five employees attended, that the "reason for the meeting was to discuss transferring the members of 595 to 848," that no actual meeting was held inasmuch as a "representative number" of employees was not present, and that he stated that another meeting would be held. Subsequently, according to Petitt, another employee meeting was held on June 28, and the warehouse employees voted 10 to 1 in favor of transferring to Local 848.[8]

Notwithstanding whether the transfer of representation status to Local 848 was accomplished by internal union fiat or as a result of a secret-ballot election by the affected employees, the Respondent continued to accept dues from the warehouse employees through August; it was not until September that Local 848 acknowledged any sort of representational status by accepting dues. In fact, according to Jack McCarthy, no other labor organization, except the Respondent, proclaimed itself the representative of the Employers' warehouse employees until sometime in February 1981 at which time representatives of Local 848 approached him at the Employers' Vernon, California office and inquired as to potential back wages which allegedly were owed to warehouse employees. Prior to this, McCarthy had no knowledge of the Respondent's actual cessation of representation status.[9] Finally, on March 3, 1981, the Respondent sent the following letter to the Regional Director of Region 21.

> Pursuant to a secret ballot vote, the employees of [the Employer], which were represented by [the Respondent], elected to have Local 848 . . . represent them in place and instead of Local 595. Pursuant to that vote, Local 595 turned over the authority to Local 848 to represent said employees. At that time Local 595 terminated its responsibilities of representing said employees . . . .

[8] Petitt did not attend this second employee meeting. His testimony was based on a conversation with the Respondent's president and on Respondent's "minutes" of the meeting. Clearly, then, Petitt's testimony in this regard is hearsay in nature.

[9] There was testimony regarding a greivance meeting held to discuss the termination of employee Calvin White, who had been a member of the warehouse bargaining unit. While neither witness could recall the date of such a meeting, McCarthy testified that it occurred subsequent to May 1; while Petitt recalled that the meeting occurred prior to that date. For reasons discussed infra, I do not deem it necessary to resolve this conflict in the testimony.

B. *Analysis*

The complaint alleges that, by failing and refusing to execute the written collective-bargaining agreement, embodying the Employers' proposal which was ratified by its employee-members on or about April 26, the Respondent engaged in conduct violative of Section 8(b)(3) of the Act. In support, counsel for the General Counsel argues that notwithstanding disagreement on several provisions, the Respondent agreed to submit the Employers' April 16 offer to the employees for ratification; that such a procedure was the method of contract acceptance herein; that the employees did, in fact, ratify the Employers' proposal; that the Employers demanded, and continued to demand that the Respondent execute General Counsel's Exhibit 15 which embodies the aforementioned ratified proposal; and that the Respondent has failed and refused to execute this collective-bargaining agreement. The Respondent asserts three defenses herein. Initially, while admitting employee ratification of the Employers' April 16 contract proposal, the Respondent contends that such does not legally constitute acceptance thereof without some accompanying affirmative act by the Respondent, such as a signature or stated agreement to execute the contract. Next, the Respondent argues that its April 29 and March 31, 1981, letters constituted disclaimers of interest in representing the Employers' warehouse employees and that, accordingly, it no longer was under any duty to execute the collective-bargaining agreement. As a corollary, it is also argued that any remedy would be ineffectual against the Respondent inasmuch as Local 848, rather than the Respondent, currently represents the warehouse employees, the Respondent having ceded such status and the employees having selected Local 848 by majority vote.

In agreement with counsel for the General Counsel, there can be no doubt herein that ratification constituted the method by which the Respondent was to, and did, indicate acceptance of the Enployers' last contract proposal and that after the employees ratified the April 16 proposal the Respondent acted in violation of Section 8(b)(3) of the Act by refusing to execute a written contract embodying said proposal. Thus, on January 3 the Respondent's attorney demanded that the Employers submit a "final offer" which would be presented to the employees for ratification. The record warrants the inference—and, I believe, the attorney meant—that ratification was to be the Respondent's method for signifying acceptance of that offer. That such must have been the understanding of the Employers is clear from the wording of article XXIII of their April 16 proposal—"Upon ratification by employees within the covered bargaining unit this Agreement shall be effective . . . ." There is no record evidence that the Respondent ever disputed this provision and, indeed, Petitt's statement at the close of the April 16 bargaining session, that while recommending neither acceptance nor rejection of the proposal he would submit it to the employees for ratification, could only have conveyed the impression that ratification was to signify the Respondent's acceptance of this proposal. Certainly, as is argued, if the Respondent's internal procedures, bylaws, or constitution required some other act

to constitute acceptance, Petitt would have so notified the Employers, and the entire ratification procedure would have been rendered superfluous. To the contrary, past practice and the wording of the April 16 proposal convince me that employee ratification was to be the Respondent's method of signifying acceptance of the Employers' April 16 proposal. Furthermore, there is no dispute either that on April 26 the Employers' warehouse employees ratified the aforementioned contract proposal or that since said ratification the Respondent has failed and refused to execute a document which memorializes that agreement.[10] The Supreme Court and the Board have long recognized that ratification may be a method whereby one party signifies its acceptance of a contract and have long held that if a union chooses this method for accepting a contract and if said contract is ratified the union is thereafter bound to that agreement and a refusal to sign on request constitutes a refusal to bargain in good faith in violation of Section 8(b)(3) of the Act. *H. J. Heinz Co. v. NLRB*, 311 U.S. 514 (1941); *Office Employees Local 42 (UAW Local Council of Michigan)*, 226 NLRB 991, 998 (1976); *Utility Tree Service*, 218 NLRB 784 (1975); *Teamsters Local 749 (American Colloid Co.)*, 195 NLRB 474 (1972). Such must be the finding herein.

The Respondent next argues that, inasmuch as on April 29 and on March 3, 1981, it disclaimed interest in representing the Employers' warehouse employees, it no longer is under any obligation to execute General Counsel's Exhibit 15. Contrary to the Respondent, counsel for the General Counsel and counsel for the Employers argue that the language of the Respondent's April 29 and March 3, 1981, letters to the Employers and the Regional Director for Region 21, respectively, is insufficient to constitute an effective disclaimer of interest and that, in any event, said disclaimer has been asserted in bad faith.

I agree with the latter position. Initially, I note that the Board can—and will—not compel a union to represent employees it no longer desires to represent. *Electrical Workers IBEW Local 58 (Steinmetz Electrical Contractors)*, 234 NLRB 633, 634 (1978). The Board permits a union to signify such intent by means of a so-called disclaimer of interest. As stated by the Board: "A disclaimer to be effective must be unequivocal and must have been made in good faith. A union's 'bare statement' of disclaimer is not sufficient to establish that it has abandoned its claim to representation, if the surrounding circumstances justify an inference to the contrary. The union's conduct must not be 'inconsistent' with its alleged disclaimer." *Retail Associates*, 120 NLRB 388, 391–392 (1958). "The question . . . is whether the union has in good faith disclaimed or whether [such] is simply a sham . . . ." *Rochelle's Restaurant*, 152 NLRB 1401, 1403 (1965). Assuming arguendo, the sufficiency of the language of the Respondent's April 29 and March 3, 1981, letters as unequivocal disclaimers of interest,[11] the record clearly establishes, and I find, that said letters were submitted in bad faith and merely represent maneuvers by Respondent to avoid being bound to the terms of, what it considers to be, a bad agreement. Thus, the Respondent's bargaining agent Petitt admitted that the aforementioned April 29 letter was sent by the Respondent to Jack McCarthy as certain of the economic provisions of the Employers' contract proposal, which had been ratified by the employees, were unacceptable to it—a position based on the stated bifurcation between junior and senior employees in the vacation and wage provisions, a distinction inconsistent with the economic terms of multiemployer agreements to which the Respondent was a party.[12] Using Petitt's admission as a starting point, close scrutiny of the Respondent's conduct reveals that having apparently never objected to the inclusion of the aforementioned language during negotiations and having itself unconditionally offered to submit the Employers' April 16 contract proposal for ratification, after the ratification vote the Respondent became encumbered with a contract, the terms of which could conceivably cause a Pandora's box-load of problems when the aforementioned multiemployer agreements came due for renewal. Viewed in this light, as corroborated by Petitt's admission, the Respondent's April 29 "disclaimer" seems to have been nothing more than a voluntary and purposeful attempt by it to avoid the constraints and obligations of its own perceived bad bargain. While the Board has approved union disclaimers of interest in similar circumstances for legitimate considerations—when involuntarily based on the AFL–CIO "no raid" provision (*Meat Cutters Local 158 (Eastpoint Seafood Co.)*, 208 NLRB 58 (1973)), or on a jurisdictional dispute with another union (*Teamsters Local 42 (Grinnell Fire Protection Systems Co.)*, 235 NLRB 1168 (1978), affd. *Dycus v. NLRB*, 615 F.2d 820 (9th Cir. 1980)), the Board will not permit a labor organization to disclaim interest solely to avoid terms of a collective-bargaining agreement which may, for internal considerations, constitute an unfortunate bargain for that union. *Sheet Metal Workers Local 65 (Inland Steel Products)*, 120 NLRB 1678 (1958). Cf. *Grinnell Fire Protection Systems*, supra. More specifically, as stated by the Board in a similar context, "Bargaining relationship stability is no less a concern for management as it is for labor organizations. Each party has substantial investments in the bargaining process and their investments deserve both deference and protection." *East Mfg. Corp.*, 242 NLRB 5, 6 (1979). Simply to permit a labor organization to disavow its lawful contract obligations because it is dissatisfied with the terms of an agreed-upon con-

[10] The Respondent does not contend that the General Counsel's Exhibit 15 is not an accurate memorialization of the Employers' April 16 proposal, which was ratified by the employees.

[11] The thrust of the arguments of counsel for the General Counsel in this regard appears to be based on the failure by the Respondent to use precise words, such as "We no longer wish to represent . . .," in either the April 29 or March 3, 1981, letters. From said failure, counsel ultimately speculates that the Respondent was ambivalent on this point, making any disclaimer contingent on the representational status of Local 848. While admittedly the matter is not free from doubt, I believe a permissible reading of both letters is that the Respondent no longer desires to represent the Employers' warehouse employees. Otherwise, why would it cede representational status to Local 848, an act which itself constitutes a disclaimer of interest. Petitt's admission that he did not wish the aforementioned employees to be unrepresented is not inconsistent and should not be interpreted to the contrary. In any event, in view of my findings herein, I need not decide whether the words utilized by the Respondent "unequivocally" state its intent to disclaim interest.

[12] Petitt's admission reveals that the reason for the April 24 letter ("In view of the small number of employees in the bargainging unit"), as stated therein, was a sham.

tract is repugnant to the purposes and policies of the Act. *Dycus v. NLRB*, supra at 826. Inasmuch as a disclaimer of interest in such circumstances will be given no deference, the Respondent's arguments are without merit. *East Mfg.*, supra.

Notwithstanding such a finding, counsel for the Respondent points out the Respondent has, in fact, ceded its representational status to Local 848, that the Respondent, therefore, can execute no collective-bargaining agreement on behalf of the Employers' warehouse employees, and that, in any event, any order requiring the Respondent to do so would be ineffectual and futile. I do not agree and believe that said transfer need not nullify the effectiveness of the traditional remedies for the Respondent's unfair labor practices. Initially, I note that Petitt expressed the view that the Respondent's intent herein has always been to ensure that the warehouse employees remain represented. However, assuming arguendo that I give effect to the transfer of representation status to Local 848, neither the Board nor the courts will require the Employers to recognize Local 848 as the collective-bargaining representative of the aforementioned employees merely on that basis. Thus, "where there is an attempt to substitute a new employee representative for the existing certified representative without an election or continuity of representation, a question of representation exists, and the Board will not . . . compel an employer to bargain with the new employee representative." *Dycus v. NLRB*, supra at 826. Such would result only "upon the timely filing of a representation petition and a secret ballot of the employees concerned." *Gas Service Co.*, 213 NLRB 923, 933 (1974).[13] Apparently, then, inasmuch as the transfer of representative status acts as a disclaimer of interest, if the Respondent's ceding of its status is given effect, the Employers' warehouse employees will be left unrepresented. *Grinnell Fire Protection Systems*, supra; *Eastpoint Seafood*, supra.[14]

Careful analysis of the applicable law on the transfer of representation status reveals only a single Board decision closely on point. In *Grinnell Fire Protection Systems*, supra, confronted with a jurisdictional dispute between two affiliated local unions, a joint council, comprised of several local unions, awarded representational status to that union which was not currently the collective-bargaining representative. A disgruntled and transferred employee-member filed a charge, alleging that an internal transfer, without affording employees freedom of choice through a secret-ballot election, coerced and restrained employees in violation of Section 8(b)(1)(A) of the Act. An administrative law judge agreed, finding that the attempt to transfer raised a question concerning representation. The Board reversed, concluding that the transfer of representative status therein was an internal union matter; that such action acted as a disclaimer of interest, effectively removing any obligations previously owed the affected employees; and that if "prompted by legitimate reasons," such a transfer would not be coercive of employee rights. *Grinnell Fire Protection Systems*, supra at 1169. Recognizing that the aforementioned rationale of the Board concerns a labor organization's duty of fair representation under Section 8(b)(1)(A) of the Act, I nevertheless believe that said precepts are equally applicable to my determination as to whether by ceding its representative status to Local 848, the Respondent has effectively precluded—and rendered futile—any order requiring it to execute and abide by General Counsel's Exhibit 15. Accordingly, while what was consummated between the Respondent and Local 848 may have been an internal union matter, I conclude that such could have relieved the Respondent of its lawful obligations only if "prompted by legitimate reasons." This is hardly the situation. Rather, Petitt admitted that the Respondent's refusal to execute the ratified agreement and its April 29 letter were motivated by the Respondent's perception that said contract was inimical to its interests. I have previously concluded, therefore, that the voluntary refusal to execute for internal consideration was violative of Section 8(b)(3) of the Act. It would be sheer sophistry to somehow disassociate the Respondent's ceding of its representative status to Local 848 from its prior unlawful conduct. Clearly, both actions are inextricably intertwined, with the former in furtherance of the Respondent's efforts to avoid its lawful contractual obligations. Accordingly, as I do not believe the ceding of representative status to Local 848 was motivated by any legitimate concerns and as any contrary finding would be disruptive of the bargaining relationship between the Employers and the Respondent and repugnant to employees' rights and the purposes of the Act, I will not accept the Respondent's action of ceding representational status to Local 848 as relieving it of any and all obligations resulting from its certification as the collective-bargaining representative of the Employers' warehouse employees and shall order it to execute and abide by General Counsel's Exhibit 15, the written collective-bargaining agreement embodying the Employers' contract proposal which was ratified by the employees on or about April 26.

V. THE REMEDY

Having found that the Respondent engaged in unfair labor practices warranting a remedial order, I shall order that it cease and desist therefrom and that it take certain affirmative action to effectuate the policies of the Act. It having been found that the Respondent, as the certified bargaining representative of the Employers' warehouse employees, unlawfully failed and refused to sign the written collective-bargaining agreement, embodying the terms and conditions of employment contained in the Employers' April 16 contract proposal which was ratified by the Employers' warehouse employees, I shall further order that the Respondent, as the collective-bargaining representative of said employees, forthwith execute and abide by said agreement.

[13] In this regard, despite the reference to an employee vote in the Respondent's March 3, 1981, letter and despite Petitt's hearsay testimony concerning the results of such a vote, there is no evidence as to the surrounding circumstances, much less whether any election was by secret ballot, of the selection of Local 848 by the warehouse employees as their bargaining representative. In fact, the only credible evidence on this subject is the testimony of employee Markham, who quoted Petitt as saying a vote "wouldn't do any good . . . ."

[14] Counsel for the Employers, in his posthearing brief, asserts that such a result would be "appropriate" in these circumstances. Counsel for the General Counsel did not address this particular issue.

CONCLUSIONS OF LAW

1. The Respondent, Food, Drug, Beverage Warehousemen and Clerical Employees Local 595, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

2. The Employers, Edna Pagel, Inc. d/b/a Sweetner Products Company and Vernon Warehouse, Inc., constitute a single employer within the meaning of Section 2(2) of the Act and are an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all times material herein, the Respondent has been, and continues to be, the certified collective-bargaining representative of the following appropriate unit:

> All warehouse employees, forklift operators, mill operators, and liquid plant employees employed by the Employers at their facility located in Vernon, California; excluding all other employees, drivers, maintenance employees, guards, and supervisors as defined in the Act.

4. By faillng and refusing to execute and abide by the written collective-bargaining agreement, embodying the terms and conditions of employment contained in the Employers' contract proposal which was ratified by the aforementioned bargaining unit employees on April 26, 1980, the Respondent has refused, and continues to refuse, to bargain collectively with the Employers within the meaning of Section 8(b)(3) of the Act.

5. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

ORDER[15]

The Respondent, Food, Drug, Beverage Warehousemen and Clerical Employees Local 595, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Vernon, California, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Edna H. Pagel, Inc. d/b/a Sweetner Products Company, Inc. and Vernon Warehouse, Inc. by refusing to execute and abide by the collective-bargaining agreement, embodying the terms and conditions of employment contained in the employers' contract proposal which was ratified by the Employers' warehouse bargaining unit employees on April 26, 1981.

(b) In any like or related manner interfering with, restraining, or coercing employees of the Employers in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Forthwith execute and abide by the written collective-bargaining agreement, embodying the terms and conditions of employment contained in the Employers' contract proposal which was ratified by the Employers' warehouse bargaining unit employees on April 26, 1981.

(b) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."[16] Copies of said notice, on forms provided by the Regional Director for Region 21, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Furnish the Regional Director for Region 21 signed copies of such notice for posting by the Employer, if willing, in places where notices to employees are customarily posted.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."